IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8837 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AGRI. PRODUCE MARKET COMMITTEE

Versus

COLLECTOR

Appearance:

MR JR NANAVATI for Petitioner

RULE SERVED for Respondent No. 1, 2

MS NANDINI JOSHI AGP, for the Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 12/06/2001

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the Agricultural Produce Market Committee, Dhoraji (hereinafter referred to as `the petitioner or the APMC') has challenged the order dated 23-5-1989 passed by the State Government confirming and partly modifying the order dated 16-12-1988 passed by the Collector, Rajkot in respect of land admeasuring 40 acres

in Survey No.623/2 in Village Dhoraji Taluka Dhoraji in Rajkot district.

2. The above land was granted to the petitioner by the State Government's order dated 27-5-1983 (annexure A) subject to certain conditions and followed by the Collector's order dated 7-7-1983 at Annexure B to the petition. The land was granted to the petitioner APMC subject to certain terms and conditions including condition No.2 that after receiving the possession of the land, the APMC shall undertake the construction within six months and complete the construction within two years. Condition No.7 also provided that in case of breach of any of the terms and conditions, the land will be liable to be forfeited to the State Government. The Collector, Rajkot initiated proceedings for forfeiture of the land on the ground that the petitioner had not complied with the aforesaid condition for use of the land in question. Show cause notice was given to the petitioner. The petitioner submitted its reply to the same and also prayed for extension of time limit for putting up construction on the land in question. The Collector, passed the order dated 16-12-1988 imposing penalty of an amount equivalent to 20 times the amount of land revenue assessment and upon payment of the said penalty, the petitioner was to be granted extension of two years for putting up construction on the land in question. In appeal, the State Government passed the impugned order dated 23-5-1989 confirming the imposition of penalty to the extent of 20 times the amount of land revenue assessment for breach of the conditions and further directed that the Collector may consider the petitioner's request for extension of time limit after recovering a further amount equivalent to five times the amount of land revenue assessment. Against the aforesaid order of the State Government, the petitioner-APMC has approached this Court.

3. Mr. J.R. Nanavati, learned counsel appearing for the petitioner states that during pendency of the petition, the petitioner APMC has already surrendered 30 acres out of 40 acres of land of Survey No.623/2 and that on 5-3-1998 the possession of the said 30 acres has already been taken over by the Collector, Rajkot as per the Rojkam (Annexure L) dated 5-3-1998. Mr. Nanavati submits that since the petitioner is a public body which is not basically interested in making any profits or in holding the land for any private purpose but the APMC will use the remaining 10 acres of land as and when the funds shall permit, having regard to the fact of 30 acres of land has already been surrendered, the imposition of

penalty is not justified or in any case is required to be reconsidered.

4. On the other hand, Ms. Nandini Joshi, learned AGP appearing for the respondents opposes the petition and submits that the petitioner APMC had taken grant of land way back in the year 1983 with open eyes and when the petitioner is found to have committed the breach of terms and conditions of the grant, the impugned order is perfectly legal and valid and the petition deserves to be dismissed.

5. Having heard the learned counsel for the parties, it appears to the Court that when the petitioner- APMC has already surrendered 30 acres out of 40 acres of land in question and the petitioner -APMC is a statutory body set up under the provisions of the Gujarat Agricultural Produce Market Committee Act, 1963 with the object of ensuring proper planning and development of agricultural produce markets all over the State in a balanced manner as also to provide among other things, technical, financial and legal assistance to market committees, this appears to be a fit case for directing the State Government to reconsider the matter and examine the question afresh whether the orders for imposition of penalty and forfeiture of land are still required to be confirmed when the petitioner has already surrendered 30 acres of land out of 40 acres of the land in question.

6. In view of the above discussion, the petition is partly allowed. The matter is remanded back to the State Government for re-examining the entire question about the imposition of penalty and forfeiture of land in respect of 40 acres of land in Survey No..623/2 in Dhoraji Taluka Dhoraji, Rajkot District within six months from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier without being fettered by the previous order dated 23-5-1989 at Annexure J to the petition. Rule is made absolute to the aforesaid extent with no order as to costs.

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